

ASSEMBLY BILL 400 (LRB -0517)

An Act to repeal 20.465 (4) (b), 20.465 (4) (g), 20.465 (4) (k), chapter 21 (title), 21.025 (2) (b), 21.025 (5) (c), 21.025 (7), 21.025 (13), 21.15 (title), 21.155 (title), 21.19 (title), 21.19 (3) (b), 21.19 (6), 21.19 (7) (a) (intro.), 21.20, 21.21, 21.25, 21.26 (title), 21.32 (title), 21.33 (title), 21.36 (title), 21.37, 21.42, 21.49 (1) (ae), 21.50 (3) and (4), 21.56 (title), 21.57 (title), 21.59, 21.60, 21.61 (title), 21.612, 21.616 (title), 21.62, 21.63, 21.70 (title), 21.75 (1) (a), 21.75 (1) (c), 21.78 (5), 21.80 (1) (f) and 21.80 (8); to renumber 21.015 (1), 21.025 (title), 21.025 (2) (title), 21.025 (5) (title), 21.025 (11m) (title), 21.13 (title), 21.18 (title) and (1) (intro.), 21.18 (1) (a) to (c), 21.18 (1) (k), 21.18 (4), 21.26 (2) (b), 21.28 (title), 21.49 (title) and (1) (intro.), 21.49 (1) (am) and (ar), 21.49 (1) (b) (intro.), 21.49 (1) (b) 1., 1g. and 1m., 21.49 (1) (b) 3., 21.49 (2) (intro.), (a), (b) and (e), 21.50 (title), 21.51, 21.74 (8), 21.75 (1) (intro.), 21.75 (4), 21.75 (17), 21.75 (19), 21.80 (title) and (1) (intro.), 21.80 (1) (b) to (e), 21.80 (1) (g) and 21.80 (7); to renumber and amend 21.01, 21.015 (title), 21.015 (intro.), 21.015 (2), 21.025 (1), (2) (a), (c) and (d), (3), (4), (6), (8), (9), (10) and (11n), 21.025 (5) (a) and (b), 21.03, 21.04, 21.05, 21.06, 21.07, 21.09, 21.11 (title), 21.11 (1), 21.11 (2), 21.11 (3), 21.12, 21.13 (1), 21.13 (2), 21.15, 21.155, 21.17, 21.18 (1) (d), 21.18 (1) (e), (f), (g), (h), (i) and (j), 21.18 (1m), 21.18 (2), 21.18 (3), 21.18 (5), 21.19 (1), 21.19 (1m), 21.19 (2), 21.19 (3) (a), 21.19 (4), 21.19 (5), 21.19 (7) (a) 1., 21.19 (7) (a) 2., 21.19 (7) (a) 3., 21.19 (7) (b), 21.19 (8), 21.19 (9), 21.19 (10), 21.19 (11), 21.19 (12), 21.19 (13), 21.19 (14), 21.26 (2) (a), 21.28 (1), (2) and (3), 21.30 (title), 21.30, 21.32, 21.33, 21.35, 21.36 (1), 21.36 (2), 21.38, 21.43, 21.47, 21.48, 21.49 (1) (b) 2., 21.49 (1) (c), 21.49 (2) (d), 21.49 (2) (f), 21.49 (2m), 21.49 (3), 21.49 (3m) and (4), 21.50 (1) and (2), 21.52, 21.54, 21.56 (1) and (2), 21.57 (1) and (2), 21.61 (1), (3), (4) and (5), 21.616, 21.70 (1) and (2), 21.72, 21.74 (title), 21.74 (1), 21.74 (2), (3), (4), (5), (6) and (7), 21.74 (9), 21.75 (title), 21.75 (1) (b), (cm) and (d), 21.75 (2), 21.75 (3), 21.75 (5), 21.75 (6) and (7), 21.75 (8), 21.75 (9) and (10), 21.75 (11), 21.75 (12), 21.75 (13), 21.75 (14), 21.75 (15), 21.75 (16), 21.75 (18), 21.75 (20), 21.75 (21), 21.75 (22), 21.75 (23), 21.78 (title), (1), (2), (3) and (4), 21.79, 21.80 (1) (a), 21.80 (2), 21.80 (3), 21.80 (4), 21.80 (5) and 21.80 (6); to consolidate, renumber and amend 21.025 (11m) (a) and (b) and 21.26 (1) and (2) (intro.); to amend 15.04 (2), 17.29, 20.455 (1) (b), 20.465 (1) (e), 20.465 (1) (g), 20.465 (1) (i), 20.465 (2) (a), 20.465 (4) (ka), 20.865 (1) (a), 20.865 (1) (g), 20.865 (1) (q), 40.05 (4g) (a) 4., 45.03 (13) (e), 45.20 (2) (d) 3., 45.60 (1) (b), 71.93 (1) (a) 6., 106.54 (7), 121.05 (1) (a) 13., 121.095 (title), 121.095 (1) (a), 121.095 (1) (b) 1., 121.90 (1) (intro.), 230.04 (17), 230.315 (1) (c) and 230.32 (7); to create 302.31 (1m), chapter 321 (title), subchapter I (title) of chapter 321 [precedes 321.01], 321.01, 321.02 (title), 321.04 (title) and (1) (intro.), 321.04 (1) (b), 321.04 (1) (j), 321.04 (1) (m), 321.04 (1) (p), 321.04 (2) (intro.), 321.04 (2) (f), subchapter II (title) of chapter 321 [precedes 321.10], 321.10 (1) (e), subchapter III (title) of chapter 321 [precedes 321.20], 321.21 (1), 321.23 (title), subchapter IV (title) of chapter 321 [precedes 321.30], 321.39 (1) (a) (intro.), 321.39 (1) (a) 3., 321.40 (2) (f), 321.40 (6) (d), 321.51 (2) (b), 321.51 (2) (e), subchapter V (title) of chapter 321 [precedes 321.60] and chapter 322 of the statutes; and to affect Laws of 1969, chapter 20, section 10; relating to: powers and duties of the Department of Military Affairs, the adjutant general, military officers, military property and assets, the national guard, the state defense force, rights of service personnel, the Wisconsin code of military justice, making an appropriation, and providing a penalty.

2007

06-14.	A.	Introduced by JOINT LEGISLATIVE COUNCIL .	
06-14.	A.	Read first time and referred to committee on Veterans and Military Affairs	213
09-05.	A.	Public hearing held.	
09-05.	A.	Executive action taken.	
09-20.	A.	Report passage recommended by committee on Veterans and Military Affairs, Ayes 8, Noes 0	281
09-20.	A.	Referred to committee on Rules	281
10-18.	A.	Placed on calendar 10-23-2007 by committee on Rules.	
10-24.	A.	Read a second time	320
10-24.	A.	Ordered to a third reading	320
10-24.	A.	Rules suspended	320
10-24.	A.	Read a third time and passed	320
10-24.	A.	Ordered immediately messaged	320
10-25.	S.	Received from Assembly	371
11-02.	S.	Read first time and referred to committee on Veterans and Military Affairs, Biotechnology and Financial Institutions	405

2008

01-10.	S.	Public hearing held.	
02-20.	S.	Executive action taken.	
02-21.	S.	Report introduction and adoption of Senate Amendment 1 recommended by committee on Veterans and Military Affairs, Biotechnology and Financial Institutions, Ayes 5, Noes 0 (LRB a1219)	608
02-21.	S.	Report concurrence as amended recommended by committee on Veterans and Military Affairs, Biotechnology and Financial Institutions, Ayes 5, Noes 0	608
02-21.	S.	Available for scheduling.	
02-26.	S.	Placed on calendar 2-28-2008 by committee on Senate Organization.	
02-28.	S.	Read a second time.	
02-28.	S.	Senate amendment 1 adopted .	
02-28.	S.	Ordered to a third reading.	
02-28.	S.	Rules suspended.	

4P

History of Proposal

March 6, 2008

- 02-28. S. Read a third time and **concurred in** as amended.
- 02-28. S. Ordered immediately messaged.
- 03-05. A. Received from Senate amended and concurred in as amended (Senate amendment 1 adopted) 0
- 03-05. A. Senate amendment 1 **concurred in**.
- 03-05. A. Action ordered immediately messaged.

2007
ENROLLED BILL

07en A B-400

ADOPTED DOCUMENTS:

☒ Orig ☐ Engr SubAmdt

07 -0517/2

Amendments to above (if none, write "NONE"):

SAI - 2/219/1

Corrections - show date (if none, write "NONE"):

None

Topic powers and duties of the Department of Military Affairs, the adjutant general,
military officers, military property and assets, the national guard, the state defense
force, rights of service personnel, and the Wisconsin code of military justice

3/6/08
Date

[Signature]
Enrolling Drafter

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2007 ASSEMBLY BILL 400

June 14, 2007 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Veterans and Military Affairs.

1 **AN ACT** *to repeal* 20.465 (4) (b), 20.465 (4) (g), 20.465 (4) (k), chapter 21 (title),
2 21.025 (2) (b), 21.025 (5) (c), 21.025 (7), 21.025 (13), 21.15 (title), 21.155 (title),
3 21.19 (title), 21.19 (3) (b), 21.19 (6), 21.19 (7) (a) (intro.), 21.20, 21.21, 21.25,
4 21.26 (title), 21.32 (title), 21.33 (title), 21.36 (title), 21.37, 21.42, 21.49 (1) (ae),
5 21.50 (3) and (4), 21.56 (title), 21.57 (title), 21.59, 21.60, 21.61 (title), 21.612,
6 21.616 (title), 21.62, 21.63, 21.70 (title), 21.75 (1) (a), 21.75 (1) (c), 21.78 (5),
7 21.80 (1) (f) and 21.80 (8); **to renumber** 21.015 (1), 21.025 (title), 21.025 (2)
8 (title), 21.025 (5) (title), 21.025 (11m) (title), 21.13 (title), 21.18 (title) and (1)
9 (intro.), 21.18 (1) (a) to (c), 21.18 (1) (k), 21.18 (4), 21.26 (2) (b), 21.28 (title), 21.49
10 (title) and (1) (intro.), 21.49 (1) (am) and (ar), 21.49 (1) (b) (intro.), 21.49 (1) (b)
11 1., 1g. and 1m., 21.49 (1) (b) 3., 21.49 (2) (intro.), (a), (b) and (e), 21.50 (title),
12 21.51, 21.74 (8), 21.75 (1) (intro.), 21.75 (4), 21.75 (17), 21.75 (19), 21.80 (title)
13 and (1) (intro.), 21.80 (1) (b) to (e), 21.80 (1) (g) and 21.80 (7); **to renumber and**
14 **amend** 21.01, 21.015 (title), 21.015 (intro.), 21.015 (2), 21.025 (1), (2) (a), (c) and

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(d), (3), (4), (6), (8), (9), (10) and (11n), 21.025 (5) (a) and (b), 21.03, 21.04, 21.05, 21.06, 21.07, 21.09, 21.11 (title), 21.11 (1), 21.11 (2), 21.11 (3), 21.12, 21.13 (1), 21.13 (2), 21.15, 21.155, 21.17, 21.18 (1) (d), 21.18 (1) (e), (f), (g), (h), (i) and (j), 21.18 (1m), 21.18 (2), 21.18 (3), 21.18 (5), 21.19 (1), 21.19 (1m), 21.19 (2), 21.19 (3) (a), 21.19 (4), 21.19 (5), 21.19 (7) (a) 1., 21.19 (7) (a) 2., 21.19 (7) (a) 3., 21.19 (7) (b), 21.19 (8), 21.19 (9), 21.19 (10), 21.19 (11), 21.19 (12), 21.19 (13), 21.19 (14), 21.26 (2) (a), 21.28 (1), (2) and (3), 21.30 (title), 21.30, 21.32, 21.33, 21.35, 21.36 (1), 21.36 (2), 21.38, 21.43, 21.47, 21.48, 21.49 (1) (b) 2., 21.49 (1) (c), 21.49 (2) (d), 21.49 (2) (f), 21.49 (2m), 21.49 (3), 21.49 (3m) and (4), 21.50 (1) and (2), 21.52, 21.54, 21.56 (1) and (2), 21.57 (1) and (2), 21.61 (1), (3), (4) and (5), 21.616, 21.70 (1) and (2), 21.72, 21.74 (title), 21.74 (1), 21.74 (2), (3), (4), (5), (6) and (7), 21.74 (9), 21.75 (title), 21.75 (1) (b), (cm) and (d), 21.75 (2), 21.75 (3), 21.75 (5), 21.75 (6) and (7), 21.75 (8), 21.75 (9) and (10), 21.75 (11), 21.75 (12), 21.75 (13), 21.75 (14), 21.75 (15), 21.75 (16), 21.75 (18), 21.75 (20), 21.75 (21), 21.75 (22), 21.75 (23), 21.78 (title), (1), (2), (3) and (4), 21.79, 21.80 (1) (a), 21.80 (2), 21.80 (3), 21.80 (4), 21.80 (5) and 21.80 (6); **to consolidate, renumber and amend** 21.025 (11m) (a) and (b) and 21.26 (1) and (2) (intro.); **to amend** 15.04 (2), 17.29, 20.455 (1) (b), 20.465 (1) (e), 20.465 (1) (g), 20.465 (1) (i), 20.465 (2) (a), 20.465 (4) (ka), 20.865 (1) (a), 20.865 (1) (g), 20.865 (1) (q), 40.05 (4g) (a) 4., 45.03 (13) (e), 45.20 (2) (d) 3., 45.60 (1) (b), 71.93 (1) (a) 6., 106.54 (7), 121.05 (1) (a) 13., 121.095 (title), 121.095 (1) (a), 121.095 (1) (b) 1., 121.90 (1) (intro.), 230.04 (17), 230.315 (1) (c) and 230.32 (7); **to create** 302.31 (1m), chapter 321 (title), subchapter I (title) of chapter 321 [precedes 321.01], 321.01, 321.02 (title), 321.04 (title) and (1) (intro.), 321.04 (1) (b), 321.04 (1) (j), 321.04 (1) (m), 321.04 (1) (p), 321.04 (2) (intro.), 321.04 (2) (f), subchapter II (title) of chapter 321

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1 [precedes 321.10], 321.10 (1) (e), subchapter III (title) of chapter 321 [precedes
2 321.20], 321.21 (1), 321.23 (title), subchapter IV (title) of chapter 321 [precedes
3 321.30], 321.39 (1) (a) (intro.), 321.39 (1) (a) 3., 321.40 (2) (f), 321.40 (6) (d),
4 321.51 (2) (b), 321.51 (2) (e), subchapter V (title) of chapter 321 [precedes
5 321.60] and chapter 322 of the statutes; and **to affect** Laws of 1969, chapter 20,
6 section 10; **relating to:** powers and duties of the Department of Military
7 Affairs, the adjutant general, military officers, military property and assets,
8 the national guard, the state defense force, rights of service personnel, the
9 Wisconsin code of military justice, making an appropriation, and providing a
10 penalty.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's special committee on recodification of ch. 21, military affairs. The special committee was directed to conduct a recodification of ch. 21, relating to military affairs, to include reorganizing the chapter in a logical manner, renumbering and retitling sections, consolidating related provisions, modernizing language, resolving ambiguities in language, making other necessary organizational changes, and making minor substantive changes.

Military Affairs

The bill does the following regarding military affairs provisions:

1. Moves the military affairs provisions of the statutes that are currently in ch. 21 to a newly created ch. 321.
2. Reorganizes the entire chapter by subdividing it into the 5 subchapters shown in the table of contents set forth below. The current ch. 21 consists of 54 sections that are not organized into subchapters.
3. Makes nonsubstantive editorial changes to modernize language to make the language consistent with current drafting style.
4. Repeals several provisions considered no longer necessary. For example, one section in current ch. 21 relates to the Badger Challenge program, a program that no longer exists. As another example, a section is being repealed that allows the governor to prescribe rules for issuing of property to bands.

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5. Makes minor substantive changes. These include the following:

a. Modifying the current provision on legal defense of national guard and state defense force members for actions taken in the line of duty. Currently, legal counsel is appointed for state residents who are members of the state defense force or who are members of the national guard of any state. This bill also includes members of the Wisconsin national guard or Wisconsin state defense force who are not residents of Wisconsin.

b. Raising the dollar amount of rent of premises from which specified family members of a person may not be evicted while the person is in active state service, unless there is a court order. Under current law, the spouse, children, or others dependents of a service member who is in active state service may not be evicted from premises for which the rent does not exceed \$1,200 per month, unless there is a court order. The bill increases this amount to \$2,400 per month.

c. Increasing the amount of time for which a local governmental unit may grant a leave of absence to an employee for federal active duty from 4 years to 5 years.

d. Adding to the military staff of the governor a joint chief of staff with a specified rank.

Chapter 321, Department of Military Affairs, will be organized as follows:

Subchapter I
General Provisions

- 321.01 Definitions.
- 321.02 Powers and duties of the governor.
- 321.03 Powers and duties of the department.
- 321.04 Powers and duties of the adjutant general.
- 321.05 Permission to forces of other states.

Subchapter II
Military Officers

- 321.10 Military staff of the governor.
- 321.11 United States property and fiscal officer.
- 321.12 Chief surgeons.
- 321.13 Discharge of officers.
- 321.14 Authority to administer oaths.
- 321.15 Resignation of officer.

Subchapter III
Military Property

- 321.20 Distribution of military property.
- 321.21 Military property accountability.
- 321.22 Camp Williams.
- 321.23 Facilities and lands.
- 321.24 Encroachment on military areas and interference with military personnel.

Subchapter IV
National Guard and State Defense Force

- 321.30 Composition of national guard.

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- 321.31 Uniform of national guard.
- 321.32 Term of enlistment and discharge.
- 321.33 Commission and rank.
- 321.34 Examinations for promotion or appointments.
- 321.35 Pay.
- 321.36 Rules of discipline.
- 321.37 No discrimination.
- 321.38 Decorations and awards.
- 321.39 Call to state active duty.
- 321.40 Educational benefits.
- 321.41 Training;special schools;pay and allowances.
- 321.42 Defense of members of guard;payment of judgments.
- 321.43 Exemption from civil authority.
- 321.44 Exemptions from certain county duties.
- 321.51 State defense force authorized.
- Subchapter V**
- Rights of Service Members**
- 321.60 Extension of licenses for service members.
- 321.61 Service members civil relief for property taxes and mobile telephone contracts; federal active duty.
- 321.62 Service members civil relief; state active duty.
- 321.63 Local government employees or officers in federal active duty.
- 321.64 Reemployment after completion of federal active duty.
- 321.65 Reemployment rights after national guard, state defense force, or public health emergency service.

Wisconsin Code of Military Justice

When the Joint Legislative Council's Special Committee on Recodification of ch. 21, Military Affairs was convened to undertake the ch. 21 recodification, the Department of Military Affairs (DMA) requested that the committee also review proposed legislation to revise the current Wisconsin Code of Military Justice (WCMJ) which was being drafted by a working group led by the staff judge advocate general (JAG) at DMA. This part of the bill is based on that proposed legislation, with modifications to comport with legislative drafting conventions and clarify the relationship of the WCMJ to other provisions of state law. The bill places the WCMJ in newly created ch. 322, stats. To the greatest extent possible, the bill retains the structure and language of the Uniform Code of Military Justice on which the revised WCMJ is based, including use of parallel article numbers, for easy transition from one code to the other.

The current WCMJ was enacted in ch. 20, Laws of 1969. That legislation also created as s. 21.37, stats., which provides that the WCMJ shall govern the conduct of all members of the national guard and any other military force organized under state law, but that the revisor of statutes shall not print the code in the statutes. Over time, there was concern that JAGs and others who utilized the code did not have ready access to a written version of the code. According to DMA, many key provisions of the current WCMJ are outdated and limit a commander's ability to adequately discipline those under his or

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her command. Also, DMA expects that the increased activity of the Wisconsin National Guard over the past few years, both within and outside the U.S., will result in a corresponding increase in disciplinary and other military justice matters.

Under this bill, if an act or omission that is a nonmilitary offense violates both the WCMJ and the criminal law, a civilian court has primary jurisdiction. In that case, a court-martial may be initiated only if civilian authorities decline to prosecute or dismiss charges, if jeopardy has not attached. Courts-martial have primary jurisdiction over military offenses, as defined in the WCMJ.

The bill reorganizes and modernizes the current WCMJ and makes a number of substantive changes. As examples of the substantive changes, the bill:

1. Updates definitions of terms such as “state military forces,” “judge advocate,” and “commanding officer” and creates definitions of a number of terms including “record,” “military offenses,” “enemy,” and “unit training assembly.”

2. Specifies a number of state criminal code chapters that do not apply to proceedings under the WCMJ.

3. Clarifies that the WCMJ applies to members of the state military forces if they are in a duty status or a nexus exists to the military.

4. Prohibits confinement of state military personnel with enemy prisoners or other foreign nationals who are not members of the armed forces.

5. Eliminates current amounts for forfeiture of pay in nonjudicial punishment cases and instead bases forfeitures on the accused’s pay grade at the time of the offense.

6. Suspends the running of any statute of limitations until two years after termination of hostilities under certain circumstances in court-martial cases when the U.S. is in a declared war that is part of the global war on terror.

7. Establishes an affirmative defense of mental disease or defect in a court-martial trial, parallel to the defense available under state law, and specifies procedures, including those required of the state Department of Health and Family Services, for committing a person for examination and treatment who is found incompetent to stand trial due to lack of mental capacity.

8. Reduces the number of votes necessary to convict a person in a court-martial from unanimous to two-thirds in most cases.

9. Provides that appeals of court-martial decisions are to the Wisconsin Court of Appeals, District IV, and if necessary, to the Wisconsin Supreme Court, following procedures under ch. 809. stats.

10. Expands the current offense of drunken or reckless driving of a vehicle to also include operation of an all-terrain vehicle, snowmobile, aircraft, or vessel.

11. Specifies several offenses subject to court-martial that the current WCMJ leaves to civilian courts, including such offenses as “rape and carnal knowledge,” “forgery,” “violations regarding controlled substances,” and “housebreaking.” The term “controlled substance” is defined by reference to a definition in current criminal statutes.

Chapter 322, Wisconsin Code of Military Justice, will be organized as follows:

Subchapter I
General Provisions

322.0001	Criminal code interaction
322.001 Article 1	Definitions
322.002 Article 2	Persons subject to this code; jurisdiction
322.003 Article 3	Jurisdiction to try certain personnel
322.005 Article 5	Territorial applicability of the code
322.006 Article 6	Judge advocates

Subchapter II
Apprehension and Restraint

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- 322.007 Article 7 Apprehension
322.009 Article 9 Imposition of restraint
322.010 Article 10 Restraint of persons charged with offenses
322.011 Article 11 Place of confinement; reports and receiving of prisoners
322.012 Article 12 Confinement with enemy prisoners prohibited
322.013 Article 13 Punishment prohibited before trial
322.014 Article 14 Delivery of offenders to civil authorities

**Subchapter III
Nonjudicial Punishment**

- 322.015 Article 15 Commanding officer's nonjudicial punishment

**Subchapter IV
Court-Martial Jurisdiction**

- 322.016 Article 16 Courts-martial classified
322.017 Article 17 Jurisdiction of courts-martial in general
322.018 Article 18 Jurisdiction of general courts-martial
322.019 Article 19 Jurisdiction of special courts-martial
322.020 Article 20 Jurisdiction of summary courts-martial

**Subchapter V
Appointment and Composition of Courts-Martial**

- 322.022 Article 22 Who may convene general courts-martial
322.023 Article 23 Who may convene special courts-martial
322.024 Article 24 Who may convene summary courts-martial
322.025 Article 25 Who may serve as a member on courts-martial
322.026 Article 26 Military judge of a general or special court-martial
322.027 Article 27 Detail of trial counsel and defense counsel

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322.028 Article 28 Detail or employment of reporters and interpreters

322.029 Article 29 Absent and additional members

**Subchapter VI
Pretrial Procedure**

322.030 Article 30 Charges and specifications

322.031 Article 31 Compulsory self-incrimination prohibited

322.032 Article 32 Investigation

322.033 Article 33 Forwarding of charges

322.034 Article 34 Advice of judge advocate and reference for trial

322.035 Article 35 Service of charges

**Subchapter VII
Trial Procedure**

322.036 Article 36 Governor may prescribe regulations

322.037 Article 37 Unlawfully influencing action of court

322.038 Article 38 Duties of trial counsel and defense counsel

322.039 Article 39 Sessions

322.040 Article 40 Continuances

322.041 Article 41 Challenges

322.042 Article 42 Oaths or affirmations

322.043 Article 43 Statute of limitations

322.044 Article 44 Former jeopardy

322.045 Article 45 Pleas of the accused

322.046 Article 46 Opportunity to obtain witnesses and other evidence

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322.047 Article Refusal to appear or testify
47

322.048 Article Contempt
48

322.049 Article Depositions
49

322.050 Article Admissibility of records of courts of inquiry
50

322.0505 Article Defense of mental disease or defect
50a

322.051 Article Voting and rulings
51

322.052 Article Number of votes required
52

322.053 Article Court to announce action
53

322.054 Article Record of trial
54

**Subchapter VIII
Sentences**

322.055 Article Cruel and unusual punishments prohibited
55

322.056 Article Maximum limits
56

322.057 Article Effective date of sentences
57

322.0575 Article Deferment of sentences
57a

322.058 Article Conditions of confinement
58

322.0585 Article Sentences: reduction in enlisted grade upon approval
58a

322.0587 Article Sentences: forfeiture of pay and allowances during con-
58b finement

**Subchapter IX
Post-Trial Procedure and Review of
Courts-Martial**

322.059 Article Error of law; lesser included offense
59

322.060 Article Action by the convening authority
60

322.061 Article Withdrawal of appeal
61

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322.062 Article 62	Appeal by the state
322.063 Article 63	Rehearings
322.064 Article 64	Review by the senior force judge advocate
322.065 Article 65	Disposition of records after review by the convening authority
322.0675 Article 67a	Review by state appellate authority
322.070 Article 70	Appellate counsel
322.071 Article 71	Execution of sentence; suspension of sentence
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322.074 Article 74	Remission and suspension
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322.076 Article 76	Finality of proceedings, findings, and sentences
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322.0767 Article 76b	Competency; commitment for examination and treatment
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	Punitive Articles
322.077 Article 77	Principals
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322.079 Article 79	Conviction of lesser included offense
322.080 Article 80	Attempts
322.081 Article 81	Conspiracy
322.082 Article 82	Solicitation

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322.083 Article 83	Fraudulent enlistment, appointment, or separation
322.084 Article 84	Unlawful enlistment, appointment, or separation
322.085 Article 85	Desertion
322.086 Article 86	Absence without leave
322.087 Article 87	Missing movement
322.088 Article 88	Contempt toward officials
322.089 Article 89	Disrespect toward superior commissioned officer
322.090 Article 90	Assaulting or willfully disobeying superior commis- sioned officer
322.091 Article 91	Insubordinate conduct toward warrant officer, noncom- missioned officer, or petty officer
322.092 Article 92	Failure to obey order or regulation
322.093 Article 93	Cruelty and maltreatment
322.094 Article 94	Mutiny or sedition
322.095 Article 95	Resistance, flight, breach of arrest, and escape
322.096 Article 96	Releasing prisoner without proper authority
322.097 Article 97	Unlawful detention
322.098 Article 98	Noncompliance with procedural rules
322.099 Article 99	Misbehavior before the enemy
322.100 Article 100	Subordinate compelling surrender
322.101 Article 101	Improper use of countersign
322.102 Article 102	Forcing a safeguard
322.103 Article 103	Captured or abandoned property

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322.104 Article 104	Aiding the enemy
322.105 Article 105	Misconduct as prisoner
322.107 Article 107	False official statements
322.108 Article 108	Military property—Loss, damage, destruction, or wrongful disposition
322.109 Article 109	Property other than military property—Waste, spoilage, or destruction
322.110 Article 110	Improper hazarding of vessel
322.111 Article 111	Drunken or reckless operation of an all-terrain vehicle, vehicle, snowmobile, aircraft, or vessel
322.112 Article 112	Drunk on duty
322.1125 Article 112a	Violations regarding controlled substances
322.113 Article 113	Misbehavior of sentinel
322.114 Article 114	Dueling
322.115 Article 115	Malingering
322.116 Article 116	Riot or breach of peace
322.117 Article 117	Provoking speeches or gestures
322.120 Article 120	Rape and carnal knowledge
322.121 Article 121	Larceny and wrongful appropriation
322.122 Article 120	Robbery
322.123 Article 123	Forgery
322.1235 Article 123a	Making, drawing, or uttering check, draft, or order without sufficient funds
322.124 Article 124	Maiming
322.126 Article 126	Arson

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322.127 Article 127	Extortion
322.128 Article 128	Assault
322.129 Article 129	Burglary
322.130 Article 130	Housebreaking
322.131 Article 131	Perjury
322.132 Article 132	Frauds against the government
322.133 Article 133	Conduct unbecoming an officer and a gentleman
322.134 Article 134	General section
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322.135 Article 135	Courts of inquiry
322.136 Article 136	Authority to administer oaths and to act as notary
322.137 Article 137	Articles to be available
322.138 Article 138	Complaints of wrongs
322.139 Article 139	Redress of injuries to property
322.140 Article 140	Delegation by the governor
322.141 Article 141	Payment of fees, costs, and expenses
322.142 Article 142	Payment of fines and disposition
322.143 Article 143	Uniformity of interpretation
322.144 Article 144	Immunity for action of military courts

- 1 **SECTION 1.** 15.04 (2) of the statutes is amended to read:
- 2 15.04 (2) DEPUTY. Each secretary of a department or head of an independent
- 3 agency under s. 230.08 (2) (L) may appoint a deputy who shall serve at the pleasure

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1 of the secretary or agency head outside the classified service. The deputy shall
2 exercise the powers, duties and functions of the secretary or head in the absence of
3 the secretary or head, and shall perform such other duties as the secretary or head
4 prescribes. The adjutant general may appoint 2 deputies as ~~provided~~ described in
5 s. ~~21.18 (1)~~ 321.10 (1) (b) and (c). In this subsection “secretary” includes the attorney
6 general and the state superintendent of public instruction.

7 **SECTION 2.** 17.29 of the statutes is amended to read:

8 **17.29 Effect of chapter.** The provisions of this chapter supersede all contrary
9 provisions in either the general law or in special acts, except ss. 6.26 (2) (b), 6.28 (2)
10 (b), 6.55 (6), 6.875, and 7.30 relating to appointed election officials and ~~eh. 21 ch. 321~~
11 relating to the military staff of the governor and to officers of the Wisconsin national
12 guard or state defense force; and shall govern all offices whether created by general
13 law or special act, unless otherwise specially provided.

14 **SECTION 3.** 20.455 (1) (b) of the statutes is amended to read:

15 20.455 (1) (b) *Special counsel.* A sum sufficient, subject to the procedure
16 established in s. 14.11 (2) (c), for the compensation of special counsel appointed as
17 provided in ss. 14.11 (2) and ~~21.13~~ 321.42.

18 **SECTION 4.** 20.465 (1) (e) of the statutes is amended to read:

19 20.465 (1) (e) *State service flags.* The amounts in the schedule for the purchase
20 of state ~~service~~ flags pursuant to s. ~~21.19 (10)~~ 321.04 (2) (d).

21 **SECTION 5.** 20.465 (1) (g) of the statutes is amended to read:

22 20.465 (1) (g) *Military property.* The amounts in the schedule for rent of
23 state-owned military lands or buildings used by, acquired for or erected for the
24 Wisconsin national guard under s. ~~21.19 (2)~~ 321.03 (2) (a), for rental of buildings and
25 grounds maintenance equipment owned by the state and required to properly

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1 maintain properties supported by state-federal cooperative funding agreements, for
2 the repair and maintenance of state-owned military lands or buildings, for the
3 payment of municipal assessments related to state-owned military property and for
4 the purchase and construction of new military property, real and personal. All
5 moneys received on account of lost military property, from the sale of obsolete or
6 unserviceable military property, from the sale of any state-owned military property,
7 real and personal, under s. ~~21.19 (3)~~ 321.03 (2) (b), from the rental of state-owned
8 housing, or from the provision of housing-related services to military personnel shall
9 be credited to this appropriation.

10 **SECTION 6.** 20.465 (1) (i) of the statutes is amended to read:

11 20.465 (1) (i) *Distance learning centers.* All moneys received from renting the
12 distance learning centers, for the operation and maintenance of the centers under
13 s. ~~21.19 (13)~~ 321.04 (1) (n).

14 **SECTION 7.** 20.465 (2) (a) of the statutes is amended to read:

15 20.465 (2) (a) *Tuition grants.* A sum sufficient for the payment of tuition grants
16 to members of the Wisconsin national guard under s. ~~21.49 (3)~~ 321.40 (4).

17 **SECTION 8.** 20.465 (4) (b) of the statutes is repealed.

18 **SECTION 9.** 20.465 (4) (g) of the statutes is repealed.

19 **SECTION 10.** 20.465 (4) (k) of the statutes is repealed.

20 **SECTION 11.** 20.465 (4) (ka) of the statutes is amended to read:

21 20.465 (4) (ka) *Youth Challenge Academy program; public instruction funds.*
22 All moneys received from the department of public instruction under s. 121.095, for
23 the operation of the Youth Challenge Academy program under s. ~~21.26~~ 321.03 (1) (c).

24 **SECTION 12.** 20.865 (1) (a) of the statutes is amended to read:

ASSEMBLY BILL 400**SECTION 12**

1 20.865 (1) (a) *Judgments and legal expenses.* A sum sufficient to pay for legal
2 expenses under s. 59.32 (3), for costs under ss. 227.485 and 814.245 and for the costs
3 of judgments, orders and settlements of actions, appeals and complaints under
4 subch. II of ch. 111 or subch. II or III of ch. 230, and those judgments, awards, orders
5 and settlements under ss. ~~21.13~~, 165.25 (6), 321.42, 775.04 and 895.46 that are not
6 otherwise reimbursable as liability costs under par. (fm). Release of moneys under
7 this paragraph pursuant to any settlement agreement, whether or not incorporated
8 into an order, is subject to approval of the attorney general.

9 **SECTION 13.** 20.865 (1) (g) of the statutes is amended to read:

10 20.865 (1) (g) *Judgments and legal expenses; program revenues.* From the
11 appropriate program revenue and program revenue–service accounts, a sum
12 sufficient to pay for legal expenses under s. 59.32 (3), for costs under ss. 227.485 and
13 814.245 and for the cost of judgments, orders and settlements of actions, appeals and
14 complaints under subch. II of ch. 111 or subch. II or III of ch. 230, and those
15 judgments, awards, orders and settlements under ss. ~~21.13~~, 165.25 (6), 321.42,
16 775.04 and 895.46 that are not otherwise reimbursable as liability costs under par.
17 (fm). Release of moneys under this paragraph pursuant to any settlement
18 agreement, whether or not incorporated into an order, is subject to approval of the
19 attorney general.

20 **SECTION 14.** 20.865 (1) (q) of the statutes is amended to read:

21 20.865 (1) (q) *Judgments and legal expenses; segregated revenues.* From the
22 appropriate segregated funds, a sum sufficient to pay for legal expenses under s.
23 59.32 (3), for costs under ss. 227.485 and 814.245 and for the cost of judgments,
24 orders and settlements of actions, appeals and complaints under subch. II of ch. 111
25 or subch. II or III of ch. 230, and those judgments, awards, orders and settlements

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1 under ss. ~~21.13~~, 165.25 (6), 321.42, 775.04 and 895.46 that are not otherwise
2 reimbursable as liability costs under par. (fm). Release of moneys under this
3 paragraph pursuant to any settlement agreement, whether or not incorporated into
4 an order, is subject to approval of the attorney general.

5 **SECTION 15.** Chapter 21 (title) of the statutes is repealed.

6 **SECTION 16.** 21.01 of the statutes is renumbered 321.30 and amended to read:

7 **321.30 Composition of national guard.** (1) The organized militia of this
8 state shall be known as the “Wisconsin national guard” and shall consist of members
9 appointed commissioned or enlisted therein in accordance with federal law or
10 regulations governing ~~or pertaining to~~ the national guard.

11 (2) The Wisconsin national guard shall ~~be organized into~~ consist of the army
12 national guard and the air national guard units, and ~~“national guard” when used in~~
13 ~~this chapter, unless the context otherwise requires, means both the Wisconsin army~~
14 ~~national guard and the Wisconsin air national guard.~~

15 **SECTION 17.** 21.015 (title) of the statutes is renumbered 321.03 (title) and
16 amended to read:

17 **321.03 (title) Department Powers and duties of the department.**

18 **SECTION 18.** 21.015 (intro.) of the statutes is renumbered 321.03 (1) (intro.) and
19 amended to read:

20 321.03 (1) (intro.) The department ~~of military affairs~~ shall do all of the
21 following:

22 **SECTION 19.** 21.015 (1) of the statutes is renumbered 321.03 (1) (a).

23 **SECTION 20.** 21.015 (2) of the statutes is renumbered 321.03 (1) (b) and
24 amended to read:

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1 321.03 (1) (b) Provide facilities and support for the national guard and any
2 other support available from the appropriations under s. 20.465. INSERT SA1-1

3 SECTION 21. 21.025 (title) of the statutes is renumbered 321.51 (title).

4 SECTION 22. 21.025 (1), (2) (a), (c) and (d), (3), (4), (6), (8), (9), (10) and (11n) of
5 the statutes are renumbered 321.51 (1), (2) (a), (c) and (d), (3), (4), (5), (6), (7), (8) and
6 (10) and amended to read:

7 321.51 (1) AUTHORITY AND NAME. The adjutant general may establish a plan for
8 organizing a military force to be known as the ~~Wisconsin state defense force.~~ “state
9 defense force.” The governor, or adjutant general if designated by the governor, may
10 organize the ~~Wisconsin state defense force under the plan, which may include an~~
11 aviation unit, if all or part of the national guard is called into the service of the United
12 States. ~~It federal active duty.~~ The state defense force shall be a uniformed force
13 distinct from the national guard, uniformed, and composed of officers, commissioned
14 or assigned, officers and of enlisted personnel who volunteer for service.
15 ~~Membership in the Wisconsin state defense force may not include any A person who~~
16 ~~is on active duty in the active military U.S. armed forces, including the active reserve~~
17 ~~components, may not serve in the state defense force. Persons A person in the retired~~
18 ~~or inactive reserve may serve in the Wisconsin state defense force.~~

19 (2) (a) The governor or adjutant general, if designated by the governor, may
20 prescribe rules and regulations ~~not inconsistent, instructions, and policies~~
21 consistent with this section governing the enlistment, organization, administration,
22 equipment, uniforms, maintenance, training, and discipline of such forces, except
23 ~~that such rules and regulations, insofar as the state defense force. The regulations,~~
24 instructions, and policies, to the extent the governor deems practicable and desirable
25 considers necessary, shall conform to existing law governing and pertaining to the

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1 national guard and the rules and regulations promulgated thereunder and. The
2 regulations, instructions, and policies shall prohibit the acceptance of a member of
3 the state defense force from accepting any gifts, donations, gratuities, or anything
4 other things of value by such forces or by any member of such forces from any person
5 by reason of such membership given to the member because he or she is a member
6 of the state defense force other than wages and benefits paid by the state.

7 (c) Officers and enlistees, while on state active duty under orders of the
8 governor, in the state defense force shall receive the base pay and allowances of the
9 identical grade in the United States U.S. army.

10 (d) The adjutant general may organize a ~~cadre force~~ recruitment and training
11 unit of not more than 12 ~~personnel~~ persons at each ~~state-owned~~ state armory. ~~Each~~
12 ~~cadre force shall~~ The unit shall establish recruitment lists of persons interested in
13 becoming members of the state defense force, ~~which may be used to recruit full units~~
14 ~~for the state defense force in case the national guard is mobilized for active federal~~
15 ~~duty, and train the persons recruited.~~

16 (3) REQUISITIONS; ARMORIES; OTHER BUILDINGS. ~~For the use of such forces, the~~ The
17 governor or adjutant general, if designated by the governor, may requisition military
18 property from the federal government ~~such arms and equipment as may be available,~~
19 ~~and the~~ for the use of the state defense force. The governor or adjutant general, if
20 designated by the governor, may make available to the state defense force the
21 facilities of state armories and ~~their equipment and such~~ military property and other
22 state premises and property ~~as may be available and may, through the.~~ The
23 ~~department of military affairs,~~ may rent or lease buildings or parts of buildings and
24 grounds for armory purposes or continue in possession of such those premises leased
25 by the department of ~~military affairs~~ for the use of the national guard, paying rental

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1 ~~therefor out of funds appropriated~~ rent from the appropriation under s. 20.465 (1) (a).
2 All leases ~~so made shall~~ made under this subsection terminate upon dissolution of
3 the ~~Wisconsin~~ state defense force regardless of the term provided ~~therein~~ in the lease,
4 unless the premises ~~shall be~~ are needed for national guard purposes, ~~in which case~~
5 ~~the.~~ The lease for the premises needed for the national guard may be assigned by
6 the department of ~~military affairs~~ to the national guard organization ~~intending that~~
7 intends to occupy the premises.

8 (4) ~~USE WITHOUT OUTSIDE THIS STATE. Such forces shall~~ The state defense force
9 may not be required to serve outside the boundaries of this state except unless one
10 of the following applies:

11 (a) Upon the request of the governor of another state, the governor of this state
12 ~~may order any portion or~~ orders all or part of such forces ~~the state defense force~~ to
13 assist the ~~a~~ military unit or ~~police forces of such~~ law enforcement agency of the other
14 state ~~who are actually engaged in defending such other state. Such forces may be~~
15 ~~recalled by the.~~ The governor at the governor's discretion may recall the state
16 defense force from the other state at any time.

17 (b) ~~Any organization, unit, or detachment of such forces, upon~~ Upon order of
18 the officer in immediate command thereof, ~~may continue, the state defense force~~
19 continues in fresh pursuit of insurrectionists, saboteurs, ~~enemies~~ terrorists, or
20 enemy forces ~~beyond the borders of this state into another state until they are~~
21 apprehended or captured by ~~such organization, unit, or detachment~~ or until the ~~a~~
22 military unit or ~~police forces~~ law enforcement agency of the other state or the forces
23 of the United States have had a reasonable opportunity to take up the pursuit or to
24 ~~apprehend or capture such those persons, provided such.~~ Any pursuit under this
25 subsection may only take place if the other state shall have given gives authority by

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1 law for such the pursuit by ~~such forces of this state~~. Any such person who shall be
2 apprehended or is captured in such the other state by ~~an organization, unit, or~~
3 detachment of the forces of this the state defense force shall without unnecessary
4 delay be surrendered to ~~the~~ a military unit or police forces law enforcement agency
5 of the state in which the person is ~~taken~~ captured or to the United States, ~~but such~~.
6 The surrender of the person captured shall not constitute a waiver by this state of
7 its the right to extradite or prosecute ~~such~~ the person for any crime committed in this
8 state.

9 (5) FEDERAL SERVICE ACTIVE DUTY. Nothing in this section shall be construed as
10 authorizing ~~such forces, or any part thereof to be called, ordered, or in any manner~~
11 No unit of the state defense force may be drafted, as such, into the U.S. military
12 ~~service of the United States, but no.~~ No person shall by reason of enlistment or
13 ~~commission in any such forces~~ membership in the state defense force be exempted
14 from ~~military service under any law of the United States~~ federal active duty.

15 (6) DISQUALIFICATIONS. No person shall be ~~commissioned or enlisted in such~~
16 ~~forces who is not a citizen of the United States or who has been expelled or~~
17 ~~dishonorably discharged from any military or naval organization, of this state, or of~~
18 another state, or of the United States may be a member of the state defense force.

19 (7) OATH ~~OF OFFICERS~~. The oath to be taken by officers ~~commissioned or enlistees~~
20 in ~~such forces~~ the state defense force shall be substantially in the form prescribed for
21 officers of the national guard. The oath shall be filed in the same manner as in the
22 national guard.

23 (8) ENLISTEES. No person shall may be enlisted in the state defense force for
24 more than one year, but such enlistment may be renewed. ~~The oath to be taken upon~~

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enlistment in such forces shall be substantially in the form prescribed for enlistees of the national guard.

(10) LABOR DISPUTES. The state defense force shall may not be used to interfere with the orderly process of a labor dispute.

SECTION 23. 21.025 (2) (title) of the statutes is renumbered 321.51 (2) (title).

SECTION 24. 21.025 (2) (b) of the statutes is repealed.

SECTION 25. 21.025 (5) (title) of the statutes is renumbered 321.05 (title).

SECTION 26. 21.025 (5) (a) and (b) of the statutes are renumbered 321.05 (1) and (2) and amended to read:

321.05 (1) Any military ~~forces or organization, unit, or detachment thereof~~, of another state who are that is in fresh pursuit of insurrectionists, saboteurs, enemies terrorists, or enemy forces may continue such the pursuit into this state until ~~the a~~ military unit or police forces law enforcement agency of this state or the forces of the United States have U.S. military has had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons, and such the persons. The military forces of such unit of the other state may arrest or capture such those persons within in this state while in fresh pursuit.

(2) Any such person who ~~shall be~~ is captured or arrested by the military forces of such other unit of another state while in this state shall without unnecessary delay be surrendered to the a military unit or police forces law enforcement agency of this state to be dealt with according to law.

SECTION 27. 21.025 (5) (c) of the statutes is repealed.

SECTION 28. 21.025 (7) of the statutes is repealed.

SECTION 29. 21.025 (11m) (title) of the statutes is renumbered 321.51 (9) (title).

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1 **SECTION 30.** 21.025 (11m) (a) and (b) of the statutes are consolidated,
2 renumbered 321.51 (9) and amended to read:

3 321.51 (9) Officers and enlistees of the ~~"Wisconsin State Defense Force"~~ state
4 defense force who have served honorably therein for a period of at least one year and
5 ~~are active members of their respective units at the time of its demobilization shall~~
6 may, upon application to the unit commander, be permitted to retain the items of
7 their uniform prescribed by the governor by rule. (b) ~~The. If retained, the~~ uniform
8 ~~prescribed under par. (a) may be worn only on occasions of ceremony. "Occasions of~~
9 ~~ceremony" means occasions essentially of a military character at which the uniform~~
10 is more appropriate than civilian clothing, such as memorial services, military
11 weddings, military funerals, military balls, military parades, military reunions, and
12 meetings or functions of associations formed for military purposes, the membership
13 of which is composed largely or entirely of honorably discharged veterans of the
14 services members of the U.S. military, national guard, and state defense force.

15 **SECTION 31.** 21.025 (13) of the statutes is repealed.

16 **SECTION 32.** 21.03 of the statutes is renumbered 321.20 and amended to read:

17 **321.20 Distribution of arms military property.** The governor may receive
18 and distribute, ~~according to law, the quota of arms and military equipment which~~
19 property that the state may receive receives from the U.S. government of the United
20 States under the ~~provisions of any acts of congress~~ federal laws providing for arming
21 and equipping of the national guard and the state defense force.

22 **SECTION 33.** 21.04 of the statutes is renumbered 321.22 and amended to read:

23 **321.22 Camp Williams.** (1) The state ~~camp grounds~~ facility near Camp
24 Douglas, Juneau County, shall be known as "Camp Williams". The officer in charge
25 of Camp Williams ~~shall have at said camp the police powers possessed by officials at~~

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1 ~~state hospitals, as provided in s. 46.058 (2) may arrest a person for a violation that~~
2 ~~occurs at Camp Williams of a state law, local ordinance, or provision of the Wisconsin~~
3 ~~code of military justice.~~

4 (2) The adjutant general may grant to the federal government the right to use
5 any area of Camp Williams upon such conditions as that the adjutant general deems
6 advisable.

7 (3) In memory of 1st lieutenant Jerome A. Volk, the first Wisconsin air national
8 guard pilot killed in combat during the Korean conflict, so much of Camp Williams
9 as is under lease to the federal government for use of the air national guard shall be
10 known as "Volk Field" during the time the property remains under lease to the U.S.
11 government of the United States.

12 SECTION 34. 21.05 of the statutes is renumbered 321.32 and amended to read:

13 **321.32 Term of enlistment; requirements and discharge.** Every person
14 who enlists or receives a commission in the national guard shall serve for the term
15 prescribed and satisfy the physical, educational and training requirements
16 prescribed by the U.S. national guard bureau. Enlistees in the national guard shall
17 be discharged as provided in the laws and regulations of the U.S. national guard
18 bureau.

19 SECTION 35. 21.06 of the statutes is renumbered 321.44 and amended to read:

20 **321.44 Exemptions from certain county duties.** Every member of the
21 national guard or state military forces shall be defense force is exempt from service
22 on any body of county residents summoned by the sheriff to assist in preserving the
23 peace.

24 SECTION 36. 21.07 of the statutes is renumbered 321.38 and amended to read:

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1 **321.38 Decorations and awards.** The adjutant general may prescribe
2 decorations and awards for the national guard and the state defense force, ~~the.~~ The
3 adjutant general shall adopt policies establishing the form and issue thereof made
4 ~~under rules adopted by the adjutant general and approved by the governor~~ issuance
5 of those decorations and awards.

6 **SECTION 37.** 21.09 of the statutes is renumbered 321.41 and amended to read:

7 **321.41 Training; special schools; pay and allowances.** The governor or
8 adjutant general may order the national guard or state defense force to assemble for
9 training at any military establishment ~~within or without the state specified and~~
10 ~~approved by the department of defense and fix the dates and places thereof, and the~~
11 of that training. The governor or adjutant general may order members of the
12 national guard or state defense force, at their option, to attend ~~such~~ special schools
13 for military training ~~as may be~~ that are authorized by the state or federal
14 government. ~~For such training and attendance at special schools, members~~ The
15 governor or adjutant general shall determine the amount that the members of the
16 national guard or state defense force shall receive ~~such~~ as pay and allowances ~~as the~~
17 federal government ~~or the governor may authorize~~ for the training.

18 **SECTION 38.** 21.11 (title) of the statutes is renumbered 321.39 (title) and
19 amended to read:

20 **321.39 (title) Call to state active service duty.**

21 **SECTION 39.** 21.11 (1) of the statutes is renumbered 321.39 (1) (a) 1. and
22 amended to read:

23 321.39 (1) (a) 1. In case of war, insurrection, rebellion, riot, invasion, terrorism,
24 or resistance to the execution of the laws of this state or of the United States; ~~in.~~

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1 2. In the event of public disaster resulting from flood, conflagration or fire,
2 tornado; in, or other natural disaster.

3 4. In order to assess damage or potential damage and to recommend responsive
4 action as a result of natural or man-made events; or upon an event listed in subds.
5 1. to 3.

6 5. Upon application of any marshal of the United States, the president of any
7 village, the mayor of any city, the chairperson of any town board, or any sheriff in this
8 state, the governor may order into active service all or any portion of the national
9 guard.

10 (b) If the governor is absent, or cannot be immediately communicated with, any
11 such civil officer of the persons listed in par. (a) 5. may, if the officer deems the
12 occasion so is urgent, make such application, which shall be in writing, to request
13 assistance from the commanding officers of any company, battalion or regiment, who
14 may upon commander of any national guard unit. The commander shall obtain
15 approval of the adjutant general, if the danger is great and imminent, order out that
16 officer's command to the aid of such civil officer. Such before ordering the unit to
17 provide assistance. If it is not feasible to obtain approval of the adjutant general, and
18 the danger is great and imminent, the commander may order the unit to provide
19 assistance without adjutant general approval. The order shall be delivered to the
20 commanding officer, who shall immediately communicate the order to each, and
21 every subordinate officer, and every company commander receiving the same who
22 shall immediately communicate the substance thereof to each member of the order
23 to the members of the company, or if any such unit. If a member cannot be found,
24 a notice in writing containing the substance of such the order, in writing, shall be left

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1 at the last and usual member's place of residence of such member with some person
2 of suitable age and discretion, to whom its the order's contents shall be explained.

3 **SECTION 40.** 21.11 (2) of the statutes is renumbered 321.39 (2) (a) and amended
4 to read:

5 321.39 (2) (a) Any commissioned officer or enlisted member of the national
6 guard who fails to carry out orders or fails to appear at the time or place ordered as
7 provided in sub. (1) shall be punished under the Wisconsin code of military justice.

8 (b) Any person who ~~advises or endeavors to persuade an officer or soldier to~~
9 ~~refuse or neglect to appear at such place or obey such order~~ assists an officer or
10 member of the national guard in violating par. (a) shall ~~forfeit~~ be subject to a
11 forfeiture of not less than \$200 nor more than \$1,000.

12 **SECTION 41.** 21.11 (3) of the statutes is renumbered 321.04 (2) (e) and amended
13 to read:

14 321.04 (2) (e) ~~The adjutant general may activate~~ Activate members of the
15 national guard ~~for the purpose of serving to serve~~ on an honors detail of military
16 funeral honors for a person described under s. 45.60 (1).

17 **SECTION 42.** 21.12 of the statutes is renumbered 321.43 and amended to read:

18 **321.43 Exemption from civil authority.** During the time the national guard
19 or state military forces are defense force is performing military duty pursuant to
20 proper under orders issued by the governor or ~~by the governor's authority~~ adjutant
21 general, all of its members thereof, while going to, remaining at, or returning from
22 a place of duty ~~shall be~~ are exempt from arrest or service of any process issued by a
23 civilian court. In any civil or criminal prosecution against any member arising out
24 of the member's performing military duty, it shall be a defense that the member was

ASSEMBLY BILL 400**SECTION 42**

1 acting in good faith or ~~pursuant to any~~ under a lawful military order. ~~Any such~~ The
2 order shall be deemed ~~prima facie~~ considered lawful unless shown to be unlawful.

3 **SECTION 43.** 21.13 (title) of the statutes is renumbered 321.42 (title).

4 **SECTION 44.** 21.13 (1) of the statutes is renumbered 321.42 (1) (a) and amended
5 to read:

6 321.42 (1) (a) If any ~~state resident who is a member of a~~ the national guard
7 ~~of any state or of the state defense force or any resident of this state who is a member~~
8 of the national guard of another state is prosecuted by any civil or criminal action for
9 any act performed by the member while in the performance of military duty and in
10 pursuance of military duty within the scope of his or her employment as a member,
11 the action against governor, upon request of the adjutant general, shall appoint
12 counsel to defend the member shall be defended by counsel, which may include the
13 attorney general, appointed for that purpose by the governor upon the
14 recommendation of the adjutant general. The adjutant general shall make the
15 recommendation request to appoint defense counsel if the act performed by the
16 member was in the line of duty. The governor may appoint the attorney general to
17 defend the member.

18 (b) The costs and expenses of ~~any such~~ the defense under par. (a) shall be
19 audited by the department of administration and ~~paid out of the state treasury and~~
20 charged to the appropriation under s. 20.455 (1) (b) ~~and if.~~ If the jury or court finds
21 that the member of the ~~national guard~~ against whom the action is brought acted
22 within the scope of his or her employment as a member, the judgment as to damages
23 entered against the member shall also be paid by the state.

24 **SECTION 45.** 21.13 (2) of the statutes is renumbered 321.42 (2) and amended
25 to read:

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1 321.42 (2) Any civil action or proceeding brought against a member of a
2 ~~national guard or the state defense force~~ under sub. (1) ~~(a)~~ is subject to ss. 893.82 and
3 895.46.

4 **SECTION 46.** 21.15 (title) of the statutes is repealed.

5 **SECTION 47.** 21.15 of the statutes is renumbered 321.21 (5) (a) and amended
6 to read:

7 321.21 (5) (a) No person may retain at any time any ~~arms, equipment or~~
8 ~~military stores of any kind belonging to the state or any federally owned property~~
9 ~~issued to the state~~ property or money, unless the property or money has been lawfully
10 issued to the person ~~pursuant to law~~ and the proper authority permits the person to
11 retain the property or money in the discharge of a public duty. No person may use
12 ~~any public arms, equipment, clothing or military stores belonging to the state, either~~
13 ~~as owner or bailee, property or money~~ for the person's unauthorized private use. Any
14 person violating this section paragraph shall forfeit not less than \$50 \$100 nor more
15 than \$200 \$1,000.

16 **SECTION 48.** 21.155 (title) of the statutes is repealed.

17 **SECTION 49.** 21.155 of the statutes is renumbered 321.21 (5) (b) and amended
18 to read:

19 321.21 (5) (b) No A person who possesses under the laws of this state ~~any arms,~~
20 ~~equipment or other military property may willfully neglect or refuse~~ or money, after
21 the adjutant general makes lawful demand is made for the return of the property by
22 ~~order of the governor, to~~ or money shall return the property or money promptly. No
23 person may knowingly resist any officer who is lawfully taking possession of such
24 ~~arms, equipment or other~~ the military property or money. Any person violating this
25 section paragraph shall forfeit not less than \$50 \$100 nor more than \$200 \$1,000.

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SECTION 50

1 **SECTION 50.** 21.17 of the statutes is renumbered 321.24, and 321.24 (1) and (2),
2 as renumbered, are amended to read:

3 321.24 (1) The officer in charge of any area used or to be used for military
4 purposes may ~~cause the area to be marked in such a manner so as~~ mark the area to
5 warn against encroachment by unauthorized persons, but may not ~~to~~ unnecessarily
6 obstruct travel on any public highway. No person may encroach upon or enter ~~upon~~
7 the area without the consent of the officer.

8 (2) No person may ~~interecept, molest, abuse or otherwise~~ interfere with any
9 member of the national guard or ~~any other military force organized under the laws~~
10 ~~of this state~~ defense force while the member is in the performance of military duty.

11 **SECTION 51.** 21.18 (title) and (1) (intro.) of the statutes are renumbered 321.10
12 (title) and (1) (intro.).

13 ~~**SECTION 52.** 21.18 (1) (a) to (c) of the statutes are renumbered 321.10 (1) (a) to~~
14 ~~(c).~~ INSERT SAI-2

15 **SECTION 53.** 21.18 (1) (d) of the statutes is renumbered 321.10 (1) (d) and
16 amended to read:

17 321.10 (1) (d) Two assistant adjutants general for army, ~~who may hold the~~
18 whose rank of may not exceed brigadier general.

19 **SECTION 54.** 21.18 (1) (e), (f), (g), (h), (i) and (j) of the statutes are renumbered
20 321.10 (1) (f), (g), (h), (i), (j) and (k) and amended to read:

21 321.10 (1) (f) An assistant adjutant general for air, ~~who may hold the~~ whose
22 rank of may not exceed brigadier general.

23 (g) A chief surgeon for army, ~~who~~ whose rank may be a not exceed major general
24 officer.

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1 (h) A chief surgeon for air, ~~who~~ whose rank may be a not exceed major general
2 officer.

3 (i) A staff judge advocate for army, ~~who~~ whose rank may be a not exceed major
4 general officer.

5 (j) A staff judge advocate for air, ~~who~~ whose rank may be a not exceed major
6 general officer.

7 (k) A state chaplain, either army or air, ~~who~~ whose rank may be a not exceed
8 major general officer.

9 **SECTION 55.** 21.18 (1) (k) of the statutes is renumbered 321.10 (1) (L).

10 **SECTION 56.** 21.18 (1m) of the statutes is renumbered 321.10 (3) and amended
11 to read:

12 321.10 (3) In the event ~~any of the a~~ deputy adjutants adjutant general, for army
13 or for air, ~~are~~ is appointed to a military position as a major general, the adjutant
14 general shall appoint, for any periods of absence of that deputy adjutant general due
15 to other military duties, an acting deputy adjutant general. The adjutant general
16 may appoint one of the assistant adjutants general as an acting deputy adjutant
17 general.

18 **SECTION 57.** 21.18 (2) of the statutes is renumbered 321.10 (4) and amended
19 to read:

20 321.10 (4) No person shall may be appointed ~~on to~~ the governor's military staff
21 who has not had previous state or U.S. military experience.

22 **SECTION 58.** 21.18 (3) of the statutes is renumbered 321.10 (5) and amended
23 to read:

24 321.10 (5) All staff officers appointed under sub. (1), except the adjutant
25 general whose tenure is governed by ss. 15.31 and 17.07 (5), shall hold their positions

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SECTION 58

1 unless until terminated earlier by resignation, disability, or death or for cause or
2 unless federal recognition of the officer's commission under 32 USC 323 is refused
3 or withdrawn. The governor shall remove an officer whose federal recognition is
4 refused or withdrawn, effective on the date of the loss of federal recognition.

5 **SECTION 59.** 21.18 (4) of the statutes is renumbered 321.10 (6).

6 **SECTION 60.** 21.18 (5) of the statutes is renumbered 321.10 (7) and amended
7 to read:

8 321.10 (7) The adjutant general shall appoint persons to fill vacancies in
9 positions ~~in~~ on the military staff of the governor under sub. (1). Vacancies on the
10 military staff of the governor shall be filled by appointment from officers actively
11 serving in the national guard, except as provided in s. 15.31. Interim vacancies shall
12 be filled by appointment by the adjutant general for the ~~residue~~ remainder of the
13 unexpired term.

14 **SECTION 61.** 21.19 (title) of the statutes is repealed.

15 **SECTION 62.** 21.19 (1) of the statutes is renumbered 321.04 (1) (a) and amended
16 to read:

17 321.04 (1) (a) ~~The adjutant general shall be~~ Be the military chief of staff to the
18 governor. ~~The adjutant general shall have the custody of all property, military~~
19 ~~records, correspondence and other documents relating to the national guard and any~~
20 ~~other military forces organized under the laws of this state. The adjutant general~~
21 ~~may appoint an assistant quartermaster general to issue and account for state~~
22 ~~property. The adjutant general shall be the medium of military correspondence with~~
23 ~~the governor and perform all other duties pertaining to the office or prescribed by~~
24 ~~law, including the preparation and submission to the governor of reports under s.~~
25 ~~15.04 (1) (d).~~

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1 **SECTION 63.** 21.19 (1m) of the statutes is renumbered 321.04 (1) (i) and
2 amended to read:

3 321.04 (1) (i) ~~The adjutant general shall administer~~ Administer, with the
4 approval of the governor, state-federal cooperative funding agreements related to
5 the department.

6 **SECTION 64.** 21.19 (2) of the statutes is renumbered 321.03 (2) (intro.) and
7 amended to read:

8 321.03 (2) (intro.) ~~The department of military affairs on behalf of the state may~~
9 ~~rent~~ do any of the following:

10 (a) Enter into an agreement to rent to appropriate organizations or individuals
11 state-owned lands, buildings, and facilities used by, acquired for, or erected for the
12 national guard when not required for use by the national guard. ~~Such~~ A rental ~~shall~~
13 agreement under this paragraph is not be effective unless in writing and approved
14 in writing by the governor and the adjutant general or a his or her designee in
15 writing.

16 **SECTION 65.** 21.19 (3) (a) of the statutes is renumbered 321.03 (2) (b) and
17 amended to read:

18 321.03 (2) (b) ~~The department of military affairs on behalf of the state, upon~~
19 Upon appraisal by the state chief engineer submitted to the governor in writing, ~~may~~
20 ~~sell and convey upon such terms as the department of military affairs may~~
21 ~~determine, and with the written approval of the governor in writing~~ sell and convey,
22 any state-owned property acquired or erected for state military purposes, ~~which if~~
23 the property is no longer useful to the national guard.

24 **SECTION 66.** 21.19 (3) (b) of the statutes is repealed.

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SECTION 67

1 **SECTION 67.** 21.19 (4) of the statutes is renumbered 321.04 (1) (g) and amended
2 to read:

3 321.04 (1) (g) ~~The adjutant general shall be the auditor of~~ Audit all military
4 accounts, and all accounts or claims payable from the treasury of the state for
5 military purposes ~~shall be regularly audited by the adjutant general~~ before payment.

6 ~~The adjutant general shall cause to be prepared and issued all necessary books and~~
7 ~~forms required by the adjutant general's office for the national guard. All of the books~~
8 ~~and forms shall be made to conform as nearly as practicable to those in use in the~~
9 ~~United States army.~~

10 **SECTION 68.** 21.19 (5) of the statutes is renumbered 321.10 (2) and amended
11 to read:

12 321.10 (2) In the absence or incapacity of the adjutant general, the senior
13 ranking deputy adjutant general for army or air shall have all the powers and duties
14 of the adjutant general.

15 **SECTION 69.** 21.19 (6) of the statutes is repealed.

16 **SECTION 70.** 21.19 (7) (a) (intro.) of the statutes is repealed.

17 **SECTION 71.** 21.19 (7) (a) 1. of the statutes is renumbered 321.04 (1) (f) and
18 amended to read:

19 321.04 (1) (f) ~~Have charge of control over~~ all the military property of the state
20 and shall military records and carefully preserve, repair, and account for the military
21 property and records.

22 **SECTION 72.** 21.19 (7) (a) 2. of the statutes is renumbered 321.04 (1) (h) and
23 amended to read:

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1 321.04 (1) (h) ~~Keep in such manner as the governor directs, and subject to the~~
2 ~~governor's inspection,~~ an account of all moneys received and expended by the
3 department.

4 **SECTION 73.** 21.19 (7) (a) 3. of the statutes is renumbered 321.04 (1) (q) and
5 amended to read:

6 321.04 (1) (q) Perform the customary duties of the his or her office, and of the
7 office of chief of all logistical services, and have the custody of all records, returns and
8 papers ~~pertaining to those offices.~~

9 **SECTION 74.** 21.19 (7) (b) of the statutes is renumbered 321.04 (1) (k) and
10 amended to read:

11 321.04 (1) (k) The Transport or contract for the transportation of all troops,
12 ~~arms, accoutrements, stores~~ national guard members and other military property
13 and the preparation for encampments shall be contracted for by the adjutant general
14 ~~under direction of the governor.~~

15 **SECTION 75.** 21.19 (8) of the statutes is renumbered 321.04 (1) (L) and amended
16 to read:

17 321.04 (1) (L) ~~The adjutant general or a designee shall issue~~ Provide or contract
18 for the provision of all necessary supplies to military property, lodging, and meals for
19 members and units of the national guard and ~~may contract for the purchase and~~
20 ~~transportation of such supplies,~~ subject to s. 16.71 (1).

21 **SECTION 76.** 21.19 (9) of the statutes is renumbered 321.04 (2) (c) and amended
22 to read:

23 321.04 (2) (c) When any military property ~~belonging to the state as owner or~~
24 bailee is wrongfully held by another person, ~~the adjutant general may bring an action~~

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SECTION 76

1 in the name of the state to recover possession of the ~~same property~~ or the money value
2 thereof of the property.

3 SECTION 77. 21.19 (10) of the statutes is renumbered 321.04 (2) (d) and
4 amended to read:

5 321.04 (2) (d) ~~The adjutant general may, upon~~ Upon receipt of a meritorious
6 requests request for a state service flags for public use flag and within the limits of
7 the appropriation made under s. 20.465 (1) (e), furnish ~~such flags~~ a flag without
8 charge to the ~~persons or organizations requesting them~~ person who requested it.

9 SECTION 78. 21.19 (11) of the statutes is renumbered 321.04 (1) (d) and
10 amended to read:

11 321.04 (1) (d) ~~The adjutant general shall provide such~~ Provide necessary
12 medical supplies and services ~~as are necessary~~ to the national guard during periods
13 of state active duty not otherwise provided under this chapter and ch. 102, to be
14 charged to the appropriation under s. 20.465 (1) (c).

15 SECTION 79. 21.19 (12) of the statutes is renumbered 321.04 (1) (e) and
16 amended to read:

17 321.04 (1) (e) ~~The adjutant general shall provide from the appropriation under~~
18 ~~s. 20.465 (1) (e)~~ Provide a United States flag or state flag to the next of kin of each
19 deceased member of the national guard who dies ~~as a result of~~ during state service
20 under s. 21.11 active duty, to be charged to the appropriation under s. 20.465 (1) (c).

21 SECTION 80. 21.19 (13) of the statutes is renumbered 321.04 (1) (n) and
22 amended to read:

23 321.04 (1) (n) ~~The adjutant general shall cooperate~~ Cooperate with the federal
24 government in the operation and maintenance of distance learning centers for the
25 use of current and former members of the national guard and the U.S. armed forces.

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1 The adjutant general may charge rent for the use of a center by a nonmilitary or
2 nonfederal person. All moneys received under this subsection paragraph shall be
3 credited to the appropriation account under s. 20.465 (1) (i).

4 SECTION 81. 21.19 (14) of the statutes is renumbered 321.04 (1) (o) and
5 amended to read:

6 321.04 (1) (o) ~~The adjutant general shall provide~~ Provide the department of
7 veterans affairs information on all necessary military points of contact and general
8 deployment information for activated and deployed members of the national guard.

9 SECTION 82. 21.20 of the statutes is repealed.

10 SECTION 83. 21.21 of the statutes is repealed.

11 SECTION 84. 21.25 of the statutes is repealed.

12 SECTION 85. 21.26 (title) of the statutes is repealed.

13 SECTION 86. 21.26 (1) and (2) (intro.) of the statutes are consolidated,
14 renumbered 321.03 (1) (c) (intro.) and amended to read:

15 321.03 (1) (c) (intro.) ~~The department of military affairs shall administer~~
16 Administer the ~~Youth~~ Challenge Academy program for disadvantaged youth under
17 32 USC 509. ~~(2)~~ The department shall determine eligibility criteria for the
18 Challenge Academy consistent with federal law. Annually, the department of
19 ~~military affairs~~ shall do all of the following:

20 SECTION 87. 21.26 (2) (a) of the statutes is renumbered 321.03 (1) (c) 1. and
21 amended to read:

22 321.03 (1) (c) 1. Calculate 40% the state share of the average cost per pupil
23 attending the ~~Youth~~ Challenge Academy program and report this information to the
24 department of public instruction.

25 SECTION 88. 21.26 (2) (b) of the statutes is renumbered 321.03 (1) (c) 2.

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1 **SECTION 89.** 21.28 (title) of the statutes is renumbered 321.11 (title).

2 **SECTION 90.** 21.28 (1), (2) and (3) of the statutes are renumbered 321.11 (1), (2)
3 and (3) and amended to read:

4 321.11 (1) The adjutant general shall recommend a candidate for appointment
5 as the ~~United States~~ U.S. property and fiscal officer for the national guard, subject
6 to the concurrence of the governor, from federally commissioned officers actively
7 serving in the national guard. The candidate shall be nominated by the governor,
8 subject to the concurrence of the U.S. secretary of the army, if the nominee is serving
9 in the army national guard, or the U.S. secretary of the air force, if the nominee is
10 serving in the air national guard.

11 (2) The officer nominated under sub. (1) shall assume the duties of a ~~United~~
12 ~~States~~ U.S. property and fiscal officer under 32 USC 708, when properly ordered to
13 active duty by the appropriate U.S. secretary, on the date specified in the order. The
14 officer shall hold his or her position unless terminated earlier by resignation,
15 disability or for cause and unless federal recognition of the officer's commission
16 under ~~32 USC 323~~ 10 USC 14902, 14903, or 14905 is refused or withdrawn.

17 (3) Any action by the governor to remove the officer appointed under sub. (1)
18 (2) for cause shall be governed by the federal laws and military regulations governing
19 removal of an officer for cause and shall be subject to review by the chief of the
20 national guard bureau and by the U.S. secretary of the army, if the officer is
21 commissioned by the army national guard, or by the U.S. secretary of the air force,
22 if the officer is commissioned by the air national guard.

23 **SECTION 91.** 21.30 (title) of the statutes is renumbered 321.12 (title) and
24 amended to read:

25 **321.12 (title) Chief surgeons; powers and duties.**